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Regional trade agreements of the EU and US – what is a common ground?

preliminary version

Introduction

The European Union (EU) and United States are one of the most important economies of the world and important trading partners for each other and for others. Moreover, they are shaping forces of the global trade law, mainly within the framework of the World Trade Organization (WTO). On the other hand though, they also both created hubs of regional trade agreements (RTAs), concluded mainly with smaller and/or less developed partners.

Therefore the Transatlantic Trade and Investment Partnership (TTIP), which has been negotiated since July 2013, is always perceived as one of the most important RTAs ever. Negotiation were supposed to be easy and concluded by the end of 2014. The reality proved otherwise and differences proved to be deeper. The main aim of my paper is to address that issue and compare RTAs of the EU and US.

According to the WTO database, the European Union is a party to over forty regional trade agreements (RTAs) notified to the WTO, while the United States has notified only fourteen of them. It results from a completely different attitude towards regional, WTO-extra- integration. It is probably also because aims of the EU and the US RTAs are different. Moreover a degree of integration in the RTAs concluded by both parties varies by region and time of conclusion.

In my research² I analyze a content and legal enforceability of the EU and US trade agreements. I try to group them and characterize particular groups of agreements concluded by both sides (although a landscape of the EU RTAs is much more complicated). In the second part I examine which areas are covered by a certain agreement with a given partner, dividing the areas into these covered by the WTO law and not covered. The analysis will include all agreements that form free trade agreement (FTA), custom union or economic integration agreements (EIA), which are in force. I will also refer briefly to some agreements which have been signed, but are not in force yet. Here, the most important agreement is the one negotiated recently between the EU and Canada – Comprehensive Economic and Trade Agreement (CETA), which is very often

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referred to in the context of TTIP. Methodology of the research was based on the Horn, Mavroidis, Sapir works.

The analysis will lead to comparisons between philosophy of concluding RTA by the EU and US, which – in my view – is very different. It will also enable me to formulate some predictions concerning future TTIP agreement between the EU and US.

1. Characteristics of the EU and the US regional trade agreements

The European Union itself is a regional trade agreement in the meaning of the WTO law – article XXIV of the General Agreement on Tariffs and Trade (GATT), as it is a custom union, and art. V of the General Agreement on Trade in Services (GATS), and required notification under article XXIV of the GATT after conclusion of a Treaty establishing the European Economic Community. Besides that fact, the Union and its predecessors – European Economic Community and European Community - have always been great proponents of regional integration and have had a long history of establishing free trade agreements.

This is the first significant difference between the EU’s and the US’s attitude towards RTAs. The US has been quite reluctant to the economic integration outside the WTO framework. The first regional trade agreement was concluded in 1985 with Israel and then in 1987 with Canada (replaced in 1992 by the North American Free Trade Agreement – NAFTA). Obviously, an attitude of the US towards regional integration as an addition to the GATT was rather negative.

It is also quite clear that the US reversed its practice after 2000. Between 2000 and 2007 the US concluded further twelve regional trade agreements. All of them are called “free trade agreement” and beside liberalization of trade in goods, they also cover trade in services and chapters related to intellectual property or public procurement. They were all notified as economic integration agreements (EIA) to the WTO.

The USA’s agreement are listed in table 1.

Table 1.

Signatory	Type of agreement	signed	WTO notification
CAFTA - DR ³	FTA	2004	FTA & EIA
Israel	FTA	1985	FTA
NAFTA	FTA	1992	FTA & EIA
Jordan	FTA	2000	FTA & EIA
Chile	FTA	2003	FTA & EIA
Singapore	FTA	2003	FTA & EIA
Australia	FTA	2004	FTA & EIA
Morocco	FTA	2004	FTA & EIA

³ Dominican Republic – Central America – United States Free Trade Agreement

Bahrain	FTA	2005	FTA & EIA
Colombia	FTA	2006	FTA & EIA
Oman	FTA	2006	FTA & EIA
Peru	FTA	2006	FTA & EIA
Panama	FTA	2007	FTA & EIA
South Korea	FTA	2007	FTA & EIA

Sorce: <http://www.ustr.gov/trade-agreements/free-tradeagreements>

It is also worth noticing that all of them except the one with Canada are currently in force. The United States is currently negotiating only two new agreements, though both of them should be crucial to international economic relations. The first big agreement under negotiations is a Trans-Pacific Partnership (TPP). Beside the US other parties involved are: Australia, Brunei Darussalam, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam (six of them are currently parties of free trade agreements with the US). In 2013 also Japan joined negotiations. The other major trade partnership is a Transatlantic Trade and Investment Partnership – long awaited trade agreement with the EU and the US, which started to be negotiated in June 2013.

The EU attitude towards trade agreements is entirely different not only because of the total number of agreements. The EU concludes different types of agreements. All of the EU trade agreements vary significantly over time of conclusion and scope, and above all – a degree of integration proposed by the EU.

Most of them have been concluded as association agreements. Association agreements are a special kind of international treaties concluded by the European Union (formerly by the EEC and EC) with especially close partners. It has a specially designed legal basis – currently it is an article 217 of the Treaty of functioning of the European Union (TFEU). As the European Court of Justice explained in the *Demirel* judgement, association agreements create “special, privileged links with non-member country which must, at least to a certain extent, take part in the Community system”⁴.

This statement is crucial for better understanding of the EU RTAs. If and RTA is and association agreements, it is obvious, that although creation a free trade area is always an important part of it, it is only a part beside other chapters relation to a maximum inclusion of a partner into the EU legal framework. Association agreements cover very broad range of issues, always having a trade part, which includes not only creation of an FTA, but usually also trade in services and other trade related issues, which might be qualified as the WTO+⁵. In consequence, association agreements can are also economic integration agreements (EIA) within the meaning of WTO law.

Association agreements of the EU might be divided into five major groups. The most advanced seem to be Stabilisation and Association Agreements (SAA) concluded with future candidate

⁴ , Meryem Demirel p.Stadt Schwäbisch Gmünd, (12/86) [1987] ECR I-3719, para. 9.

⁵ List of the WTO + and WTO-X: H. Horn, P. Mavroidis, A. Sapir, “Beyond the WTO? An anatomy of EU and US preferential trade agreements”, *The World Economy* 33(11).

states from Western Balkans region. Their aim is to prepare these countries to the future membership. They cover broad range of issues. They are always⁶ EIA, with very broad range of sectors covered by liberalization. They also require a certain level of harmonization of legislation (implementation of the EU law by a partner states).

Second group are Euromediterranean agreements (Euromed) – associations concluded with states from North Africa region. Usually these are former EU member colonies on one hand and close neighbours on the other. They are also covered by the EU Neighbourhood Policy. All of these Euromed agreements were concluded before 2002 and were notified only as FTA to the WTO, although they all consist some provisions on liberalization of trade in services. As all of these agreements were concluded over ten years ago, the EU started a process of negotiations of new association agreements, including so called deep and comprehensive FTA (DCFTA).

Supposedly, they are going to be similar in some ways to recently concluded agreements with Eastern Partnership states – Ukraine, Moldova and Georgia. All of these three agreements, signed in 2014, include DCFTA. They liberalise trade in services and were notified as FTA and EIA. Characteristic feature of these agreements is that they directly oblige the partner state to implement enumerated EU legislation. It is unclear whether their aim is to integrate Eastern Partnership more closely with the EU within a general framework of the EU neighbourhood policy or to prepare them to a full membership in a (however distant) future. Association agreements with Eastern Partnership states seemed to be a bit similar to Euromed, but mostly to SAA.

Another group of RTAs are Economic Partnership Agreements (EPAs), negotiated and concluded with ACP states (Africa, Caribbean, Pacific) group of states. All of this states are linked with the EU by one common association agreement – Cotonou Agreement concluded in 2000 and amended in 2005 and 2010. Cotonou Agreement provides a framework for cooperation, political dialogue, and above all – development aid. Trade with ACP states is though is liberalized under EPAs. Interim EPA cover only trade in goods, while full EPA covers trade in services, too.

The EU concluded also two other association agreements, which does not suit any of the above mentioned groups – with Chile and Central America. The one with Chile was signed in 2000, while the other only recently in 2013.

Only a few FTA, that were notified to the WTO by the EU are not association agreements. Their aim is therefore purely economic. Their scope is much narrower then association agreements. They are also much more alike FTA concluded by the US. One of them was concluded recently with Peru and Columbia (is also provisionally operational from 2013). The most important economically FTA is though the one concluded with South Korea. It is the first one of the new type of the EU RTAs – concluded with a developed economy, with purely economic objective. The agreement entered into force in 2011, being also the first agreement concluded with an Asian state. In September 2013 another deep and comprehensive free trade agreement has been

⁶ The only exception is Bosnia and Hercegovina, which signed SAA in 2008. This SAA cannot enter into force due to some political controversies. The Interim Agreement, which covers only trade in goods, has been operational since 2008 though.

initialed, as the EU completed its negotiations with Singapore. The EU finalized also negotiations with Canada, although an agreement has not been signed yet. These three agreements (with South Korea, Singapore and Canada) are probably the best benchmarks of what can we expect from the EU during its negotiations with the US.

A table 2 below shows 27 agreements taken into a account in my study. I excluded from the study these agreements and FTAs notified to the WTO which have been concluded with not independent countries. I also excluded member states of European Free Trade Agreement – Iceland, Norway and Switzerland. The countries are linked with the EU with very special ties, which includes much deeper integration, covering majority of the EU economic legislation. I also excluded Syria, with whom an agreement have been notified, but is not operational, nor it is going to be in a predictable future.

Table 2. RTAs covered in the research

RTA Name	Type of agreement (Group)	Signed	WTO Notification
EU - Albania	SAA	2006	FTA & EIA
EU - Algeria	Euromed	2002	FTA
EU - Bosnia & Herzegovina	SAA (Interim)	2008	FTA
EU - Cameroon	AKP	2009	FTA
EU - CARIFORUM States	AKP/EPA	2008	FTA & EIA
EU - Central America	association	2012	FTA & EIA
EU - Chile	association	2002	FTA & EIA
EU - Colombia and Peru	FTA	2012	FTA & EIA
EU - Côte d'Ivoire	AKP/EPA (Interim)	2009	FTA
EU - Eastern and Southern Africa States Interim EPA	AKP/EPA (Interim)	2009	FTA
EU - Egypt	Euromed	2001	FTA
EU - Former Yugoslav Republic of Macedonia	SAA	2000	FTA & EIA
EU – Georgia	AA DCFTA	2014	FTA & EIA
EU - Israel	Euromed	1995	FTA
EU - Jordan	Euromed	1997	FTA
EU – South Korea	FTA	2010	FTA & EIA
EU - Lebanon	Euromed	2002	FTA
EU - Mexico	Partnership Agreement	2000	FTA & EIA
EU – Moldova	AA DCFTA	2014	FTA & EIA
EU - Montenegro	SAA	2010	FTA & EIA
EU - Morocco	Euromed	1996	FTA
EU – Pacific countries	AKP/EPA (Interim)	2009	FTA
EU - Serbia	SAA	2008	FTA & EIA
EU - South Africa	AKP	1999	FTA
EU - Tunisia	Euromed	1995	FTA

EU - Turkey	association	1996	CU
EU – Ukraine	AA DCFTA	2014	FTA & EIA

*agreements cover services but are not notified as EIA

**notified to the WTO only as an early announcement

The agreements negotiated and signed by the EU and the US vary significantly. The world of the EU RTA's is far more complex, while the US's RTA are very similar one to another. They are all free trade agreements, while because of its nature, the EU concludes also deeper partnerships in a form of association agreements, which also differ, mainly because of different goals they are meant to achieve.

Beside all those differences the US and the EU have similar partners in their free trade agreement. Among twenty states which established FTA with the US fifteen have free trade areas in force also with the EU. But FTAs with eight of them (Central America as well as Colombia and Peru agreements) entered into force in 2013. Further two of them – Canada and Singapore - are about to sign RTAs. There are also two Gulf region states – Bahrain and Oman, with whom the EU started negotiations of the EU-Gulf Cooperation Council Free Trade Agreement and suspended them due to some political tensions. Only Australia does not have any agreement with the EU and is not negotiating any.

2. Methodology of analysis

A starting point of my analysis are works of Horn, Mavroidis and Sapir presented in 2010⁷. They analyzed 14 of RTAs concluded by the EU, including these concluded before 2000, which were in force in 2009. They divided all areas mentioned in a given agreement into these covered by the WTO law (marked as WTO+) and these not covered (marked as WTO-X). They discovered, that in the EU RTAs there are twice as many WTO-X provisions then in comparable agreements concluded by the US. The WTO-X agreements might be further divided into two categories: areas which are related to trade and economy, such as economic cooperation or environment and areas not related to economy at all, such as cooperation in criminal matters.

Horn, Mavroidis and Sapir pointed out, that various provisions of the EU RTAs may be of a very different nature. Some of them are concrete and related to an obligations, while other are rather general and vague. They relate to cooperation between partners rather than provide them with rights and obligations. They cannot be a basis for a dispute or arbitration. They are not enforceable.

The analysis of Horn, Mavroidis and Sapir covered 14 of the EU RTA, in force in 2009, both relatively new RTAs as well as the oldest among the EU RTAs such as EU-Turkey Association Agreement, on the basis of which a custom union has been formed or Agreement on European Economic Area. Nonetheless, the analysis can be qualified as obsolete, as during past few year

⁷ See for example World Trade Report 2011, http://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report11_e.pdf.

a number of significant new RTAs has been negotiated by the EU. Among them are EU-South Korea comprehensive free trade agreement and a few major agreements with south American countries. Also the number of Economic Partnership Agreements concluded as a completion of Cotonou Agreement with the ACP countries (with a Group of Africa, Caribbean, Pacific countries) grew recently.

At the same time, the number of the US agreements taken into account by Horn, Mavroidis and Sapir did not change at all during past few years. The US did not manage to finalize Transpacific Trade Partnership (TPP). Therefore in this part of the paper I mainly refer to their research with only necessary adjustments to categories defined below. Moreover, the US agreements, as it was stated above, does not vary among each other. There are only slight differences. Majority of them cannot be noticed is such kind of research, as it does not take into account sectors covered by liberalization.

In my research I took Horn, Mavroidis and Sapir as a starting point. All of the agreements⁸ concluded by the EU were scanned in order to define areas they cover. I divided these areas into three above mentioned groups. First group are areas which are covered by the WTO, presented in the table nr 3.

Table 3. WTO+ areas

FTA industrial goods (FTA ind.)	Tariff liberalization; elimination of non-tariff measures.
FTA agricultural goods (FTA agr.)	Tariff liberalization; elimination of non-tariff measures.
Public procurement	Progressive liberalisation; national treatment and/or non-discrimination principle; publication of laws and regulations on the Internet; specification of public procurement regime.
Trade-related intellectual property rights (TRIPs)	Harmonisation of standards; enforcement; national treatment, most-favoured nation treatment.
Movement of workers	national treatment for legal workforce, right to employment for families of legally employed, right to transfer key personnel or trainees in case of commercial presence,

⁸ All information of the EU agreements are based on the texts from the European Commission website and the Official Journal of the EU.

Commercial presence	Right to establish a company in a partner country, related to mode 3 of the GATS
Supply of services	Services delivered within the territory of one party, from the territory of another (mode 1 of the GATS) and consumption of services abroad - services delivered outside the territory of one party in the territory of another one, to a service consumer of another party (mode 2).

Focusing mainly on other the WTO+ issues I did not analyzed in details various aspects of trade in goods, such as technical barriers to trade or sanitary and phytosanitary measures. They are almost always present in the EU and US RTAs. In majority of cases there is a reference to the WTO legal framework and confirmation of its acceptance. In both cases (EU and US) trade chapters usually cover also countervailing measures as well as subsidies.

I excluded trade related measures on investments. In majority of the EU agreements investments are not directly involved and only briefly mention investments, promotion and protection of them. On the other hand they are always present in the US agreements. The US usually combine RTAs with bilateral trade agreements. The most significant example of such a combination is NAFTA. In the EU trade agreements investment chapters are present in only two recently negotiated but not yet signed agreements with Singapore and Canada⁹.

Usually there are no special provisions on trade related aspects of investments covered by TRIM Agreement. They are treated as part of investments provisions. Similar situation is related to state aid. It is a part of competition policy, which is broader than only rules directed to state aid. Therefore, provisions related to that where qualified as a part of competition policy, together with rules related to companies directly.

Except a few areas covered by the WTO law, there are lot of areas related to or strengthening WTO rules. They are all related to economy in a broad sense. Particular areas are explained in a table 4.

Table 4. WTO-X areas related to economy

Agriculture	Technical assistance to conduct modernization projects; exchange of information.
Competition policy	Maintenance of measures to proscribe anticompetitive business conduct; harmonization of competition

⁹ More on this topic in my previous works: European Bilateral Investment Agreements - Is There a Real Value Added?, together with K. Śledziowska, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2546411. ;

	laws; Establishment or maintenance of an independent competition authority, agreement on implementation of the EU competition rules, rules on state aid.
Consumer protection	Harmonization of consumer protection laws, including ; exchange of information and experts; training.
Data protection	Exchange of information and experts; joint projects, implementation of the EU data protection principles.
Development aid	Financial aid of the EU to a partner country, development aid.
Economic cooperation	Assistance in economic development, all kinds of
Environmental laws	Development of environmental standards; enforcement of national environmental laws; establishment of sanctions for violation of environmental laws; publications of laws and regulations.
Financial cooperation	Assistance in reinforcing of financial institutions and system.
Industrial cooperation	Assistance in conducting modernisation projects; facilitation and access to credit to finance.
Investment protection and promotion	Obligation to promote and protect foreign investments, provisions related to standards of protection.
Movement of capital	Liberalization of capital movement; prohibition of new restrictions, both to finance direct and indirect investments.
Working conditions	Regulation of the national labour market; affirmation of International Labour Organization (ILO) commitments; enforcement, adoption of certain standards.

Biggest number of areas is not related to economy. These are various areas, some of them rather general, other narrow and precise. Description of areas not related neither to the WTO law nor to other economic or trade related issues is described in a table 5.

Table 5. WTO-X areas not related to economy

Political dialogue	Convergence of the parties' positions on international issues.
Approximation of legislation	Application of the EU legislation in national legislation.
Border control cooperation	exchange of information; drafting legislation; training on visas and asylum; conclusion of re-admission agreements in the future, prevention and control of illegal immigration
Corruption	Regulations concerning criminal offence measures in matters affecting international trade and investment
Cultural and audio visual cooperation	Promotion of joint initiatives and local culture, promotion of the audio-visual industry; encouragement of co-production
Disarmament	Obligation to disarmament, to adjust to international instruments related to disarmament.
Education and training	Measures to improve the general level of education.
Energy and mining	Exchange of information and experience; development of joint initiatives.
Gender	Promotion of gender equality .
Health	Monitoring of diseases; development of health information systems; exchange of information.
Human rights	Respect for human rights.
Illicit drugs	Treatment and rehabilitation of drug addicts; joint projects on prevention of consumption;reduction of drug supply; information exchange.

Indigenous people	Promotion of rights and culture of indigenous people.
Information society	Exchange of information; dissemination of new technologies; training.
Money laundering	Harmonisation of standards; technical and administrative assistance.
Organized crime	Harmonization of standards; technical and administrative assistance
Public administration	Technical assistance; exchange of information; joint projects; Training.
Racism and xenophobia	Obligation to fight racism and xenophobia, cooperation and assistance,
Regional cooperation	Provisions related to cooperation, promotion of regional cooperation; technical assistance programs,
Regional development	Assistance in regional development, cohesion
Research and technology	Joint research projects; exchange of researchers; development of public-private partnership.
Rule of law	Enforcement of law, cooperation and assistance on rule of law mainly from the EU sight.
Small and medium enterprise	Technical assistance; facilitation of the access to finance.
Social development	Assistance in building social society, cooperation in raising living conditions.
Social security	Coordination of social security systems; non-discrimination regarding working conditions.
Statistics	Harmonization and/or development of statistical methods; training.
Taxation	Assistance in conducting fiscal system reforms.

Terrorism	Exchange of information and experience; joint research and studies.
Tourism	Cooperation in strengthening tourism infrastructure and market
Transport	Cooperation in building and maintenance of transport infrastructure

In the second stage of the research, after dividing RTAs into various areas covered by them, I verified if they are enforceable.

3. Areas covered by the WTO law

Trade related measures are probably the most important and concrete parts of the RTAs concluded by the EU. They are also key parts of the US trade agreements. First of all every analyzed agreement covers trade in goods. Moreover, in case of all RTAs provisions on trade in goods and abolishment of tariffs are fully enforceable. They usually refer directly to trade in industrial goods and separately to the agriculture goods and fisheries. Only in two of the EU RTAs there are no specific provisions related to trade in agriculture goods. Enforceable provisions on trade in agriculture goods does not necessarily equal their full liberalization. It simply means, that in all cases there is certain degree of liberalization or facilitation of trade in agricultural goods.

Majority of agreements covers also SPS and TBT provisions as well as provisions related to countervailing measures and subsidies. Among the US RTAs only exceptions, with much narrower scope of areas related to trade in goods that are covered are agreements with Israel and Jordan. In case of Israel it might be explained by the fact, that it is the only agreement signed before Uruguay Round even started.

The situation with trade in services is much more complicated, especially in case of the EU. First of all only 13 out of 24 agreements have been notified as EIAs to the WTO. All of these agreements cover all aspect of trade in services, except mode 4 of the GATS. They refer to right to establishment and cross border supply of services. Majority of them refer directly to mode 1 and 2 and mentions also consumption of services abroad. There are some (e.g. all SAAs) which refer simply to cross border supply of services, leaving it unclear whether they cover also mode 2 of the GATS. On the other hand though it is quite clear from other provisions of these agreements, that consumption of services is also allowed. Although only 13 agreements are official EIA, additional 9 cover right to establishment and what is more 2 of them include enforceable obligations within these field (with Jordan and Algiera). These agreements are all EuroMed as well as EU-South Africa and EU-Turkey. Only these countries which concluded interim agreements did not refer to right to establishment in any form. 18 agreements (13 EIAs plus 5 other) refer to supply of services. 14 of these provisions is enforceable (EIA states and

Algeria). Situation among the US trade agreements is far more simple. All of the EIAs cover trade in services. They refer to all modes.

Among other issues covered by the WTO law 20 of the EU agreements refer to intellectual property right in some form. Only 13 provisions here are enforceable. For example association agreements with Central America do cover that topic, but it is not enforceable. Also Interim EPA with Cameroon and Interim SAA with Bosnia and Hercegovina refer to intellectual property. At the same time among the US agreements all of them (including EU-Israel agreement concluded between TRIPS started to be negotiated) refer to TRIPS, and all of these provisions are enforceable. Moreover all except EU-Israel relate more generally to intellectual property rights regulating them.

Very similar situation refer to public procurement. 20 of the EU RTAs cover that area, while only 12 is enforceable. Government procurement provision in the EU-Korea agreement is not enforceable, but one should take into account that both South Korea and the EU are parties of the WTO Government Procurement Agreement (GPA) with its concrete rules and concessions. Among the US RTAs provisions on public procurement are always present. They are not enforceable only in one of them – with Jordan.

Provisions on movement of workers can be found only in 11 EU agreements, but in 9 of them are concrete enough to be enforceable. These provisions may vary in a level of liberalization. In majority of agreements they only supplement provisions on the right of establishment. They refer only to direct investments and enable investors to hire key personnel and some highly qualified specialist. In some cases also free movement of trainees as allowed. On the other hand, in the US RTAs any preferences in movement of workers related to investments are explicitly excluded.

4. Economic and trade related measures not covered by the WTO

The highest number of coverage among all areas qualified as trade and economic related have provisions related to environmental protection. They cover also sometimes provisions related to climate change and/or sustainable development. Environmental related provisions are present in all of the US RTAs that are EIAs and are always enforceable. In the EU RTAs only in two cases (EU-Colombia and Peru and EU-CARIFORUM) these provisions are in fact enforceable. In majority of cases they simply refer to future cooperation and assistance. Besides being far more vague then in case of the US RTAs relevant there is a broad variety among EU provisions related to environment. At the same time, in the US RTAs they are very similar and contain obligations related to possible environmental regulations conflicting with trade related measures, relationship between an RTA and multilateral trade agreements or consultation between parties.

On the other hand, in two areas almost all provisions present in various EU RTAs are enforceable. These are competition policy and movement of capital. In case of free movement of capital it almost always limited to direct investment, while portfolio investments are excluded. In this case provisions in the US RTAs are similar and always enforceable as well. It

might be explained by the fact, that they are strongly related to investments and cross border supply of services. In fact provisions that enable transfer of capital related to foreign direct investments are inevitable part of liberalization of services. On the other hand, competition provisions in the US RTAs are never enforceable. In the EU RTAs they usually mirror exactly relevant provisions of the TFEU (current article 101 and 102 as well 108 in relation to state aid). They simply widen a scope of the EU competition policy to its partners.

Areas such as industrial, economic and agricultural cooperation are present only in the EU association agreements and are never enforceable. They are always a part of chapters related to a broad cooperation with partners. Their aim is clearly creation a framework of projects of assistance for the EU partner states.

Data protection provisions can be found in relatively small number of 13 agreements. Only 8 of them are enforceable, in SAAs with Serbia, Montenegro and Albania as well as in EPA with CARIFORUM, Cameroon and Eastern Partnership states. They can be enforced only because they require a partner state to accept and adopt a set of the EU rules concerning data protection. They are never present in the US trade agreements.

The US trade agreements even though they never enable movement of workers always contain provisions related to working conditions (chapters on labour). They are always enforceable. Their main goal is to exclude possible conflicts between labour law and free movement of goods or services. Provisions related to the same topic in the EU agreements are of a very different nature recently concluded

Coverage and enforceability of provisions in all categories is presented in a table 5.

Table 5.

Area Covered	EU		USA	
	Number of provisions	Enforceable provisions	Number of provisions	Enforceable provisions
Agriculture	18	1	0	0
Competition policy	21	17	7	0
Consumer protection	13	1	2	0
Data protection	13	8	0	0
Development aid	13	4	0	0
Economic cooperation	19	0	0	0
Environmental laws	24	5	13	13
Financial cooperation	16	1	0	0
Industrial cooperation	19	0	0	0

Investment protection and promotion	15	0	11	11
Movement of capital	22	19	12	12
Working conditions	10	4	13	13

Development aid coverage here might be misleading. Although 13 countries have in their RTA some provisions on potential financial aid from the EU only a few of them are concrete. It is mainly because of the fact, that RTA cannot be a legal basis for a concrete financial aid. It is so is fact only in case of full SAA. All ACP countries get financial aid from the European Development Fund, based on the EU internal legislation as well as on the basis of the Cotonou Agreement.

5. Areas not covered by the WTO law

Although there is a broad range of various areas not related to trade and economy covered by RTAs concluded by the EU only very small number of them is enforceable. In fact, great majority of them are standardized clauses used in the association agreements of the EU. Each association agreement has a part concerning broadly understood cooperation. In these chapters one can find a great variety of issues mentioned. They usually lacks any details setting mainly goals of mutual cooperation. Therefore, as shown in a table 6, majority of areas mentioned here are not enforceable.

It is quite opposite in case of the US RTAs. They concentrate on trade and economy related measures and their scope is much narrower. Among areas listed below, there is only one area with significant number of appearances in the US trade agreements – corruption. It might be obviously explained by the fact, that corruption strongly interferes with investments. Fighting corruption can be treated here as a part of protecting US foreign direct investments.

Table 6. WTO-X areas not related to economy

Area Covered	EU		USA	
	Number of provisions	Enforceable provisions	Number of provisions	Enforceable provisions
Human rights	3	0	0	0
Approximation of legislation	15	3	0	0
Border control cooperation	13	2	0	0
Corruption	6	0	10	8

Culture and audiovisual cooperation	18	0	0	0
Disarmament	2	0	0	0
Education and training	16	0	0	0
Energy and mining	19	0	1	1
Gender	2	0	0	0
Health	6	1	0	0
Illicit drugs	18	0	0	0
Indigenous people	1	0	0	0
Information society	20	0	0	0
Money laundering	16	0	0	0
Organized crime	10	0	0	0
Political dialogue	18	0	0	0
Public administration	6	0	0	0
Racism and xenophobia	1	0	0	0
Regional cooperation	21	2	0	0
Regional development	5	0	0	0
Research and technology	19	0	0	0
Rule of law	10	0	0	0
Small and medium enterprise	9	0	0	0
Social development	14	0	0	0
Social security	9	2	0	0
Statistics	17	0	0	0
Taxation	6	0	0	0
Terrorism	9	0	0	0
Tourism	19	0	0	0
Transport	19	3	0	0

All areas covered in these “cooperation” chapters of the U association agreements might be divided into two groups. One consist of standard areas, usually included into any agreements such as transport, tourism, statics. Each association agreements touches a problem of criminal justice and cooperation within this field, but only two areas are covered by majority of them – illicit drugs (usually both trade and production) and money laundering.

There are also areas which can be found only in one or two agreements. Special provision on fighting racism and xenophobia had been placed only in the EU-Algeria agreement. Disarmament was mentioned only in the EU-Central America agreement. Gender issues are explicitly present only in two agreements concluded with Central America and Chile. It is especially surprising if we take into account that although the first one is one of the newest, the other was concluded over ten years ago. These special areas mirror probably some special need of a given partner country. It might be especially highlighted in case of indigenous people, mentioned only on the EU-Central America agreement.

Third group of areas are these mentioned only in a particular type of agreements. Great number of issues, absent elsewhere can be found in SAAs. Especially areas related to strengthening rule of law and social society or a quality of life are generally pat of these agreements. It can be explained by a special aim of these agreement, which are concluded in order to prepare third states to a future full membership.

Conclusions

There are no doubts that there are huge differences between the EU and US trade agreements. Analysis of the all RTAs already concluded by both parties proves that they vary by nature, scope and enforceability of provisions. The most important factor here is probably difference in the whole philosophy of RTAs. For years the US concluded pure free trade agreements extended by liberalization of services. The aim was economic. There were only few partners, usually closely link with the US economically or politically. On the other hand, the EU concluded agreements, where trade related provisions and establishment of free trade area was only a part of a broader association agreement. Its aim is not economic, but mainly political. But it is also clear, that that philosophy has recently changed. Since 2011 the EU has started concluding more economy-oriented agreements, with stronger partners. On the other hand, the US seem to be more open towards RTAs, too.

Taking into account only the scope and enforceability of agreements these differences seem to be even more significant. But majority of this discrepancies concerns non-economy related WTO-X areas. That difference is not significant for the future TTIP, as majority of these areas is not included into the TTIP negotiating mandate. The TTIP will probably be similar to agreements such as the ones with South Korea or Andean Community, which do not include majority of these agreements. They are usually part of association agreements.

Differences in core areas: WTO+ or WTO-X related to economy are not that significant. There are always enforceable provisions related to liberalization of trade in goods and services, as well as references to core WTO agreements such as TBT or SPS. Beside liberalization of tariffs,

I suppose that they mainly confirm WTO obligations of parties. We should also expect provisions on environment and competition policy, although possible enforceability of these provisions is rather doubtful.